

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 05-0189 JB

DAVID GARCIA,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the United States' Appeal of Conditional Release Order, filed July 28, 2005 (Doc. 13). The Court held a hearing on this matter on August 4, 2005. Consistent with the Court's ruling at the hearing on this motion, and for the reasons given at the time of the hearing, the Court will affirm the Honorable Judge Lorenzo F. Garcia, Chief United States Magistrate Judge's, order of conditional release. The Court interprets Judge Garcia's order as requiring that, before Defendant David Garcia's release, someone in the state system -- either a district attorney, a state judge, or someone else of authority -- concurs in the federal court's order of release. If the state of New Mexico desires Garcia to be returned to state custody, the Court will do so.

PROCEDURAL BACKGROUND

On July 26, 2005, Garcia appeared in court for a scheduled plea hearing before Chief Judge Garcia. Pursuant to a plea agreement, Garcia pled guilty to Count 1 of a two-count indictment charging him with possessing a destructive device in violation of 26 U.S.C. § 5861(d).

Garcia previously had been in state custody and appeared in court pursuant to a Writ of

Habeas Corpus Ad Prosequendum. The Order of Writ of Habeas Corpus Ad Prosequendum that Chief Judge Garcia signed stated that Garcia was “to remain in the custody of the said United States Marshal or his authorized representative until the federal prosecution is complete.” Order for Writ of Habeas Corpus Ad Prosequendum at 1, filed July 21, 2005 (Doc. 6). Garcia is facing pending state charges and needs to resolve his case with the state after the Court sentences him on the federal charges.

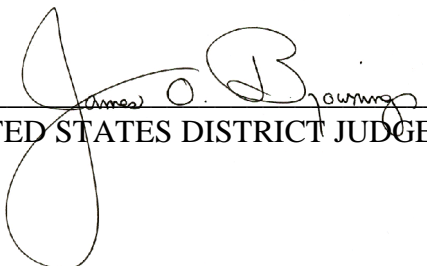
On July 27, 2005, the United States filed a Notice of Review and Appeal of Release Order, pursuant to 18 U.S.C. § 1345(a), notifying the Court that it intended to request a review and revocation of the Order of Release of the defendant. See Doc. 12. On July 28, 2005, the United States appealed the Conditional Release of the Defendant that Chief Judge Garcia, Chief United States Magistrate Judge, set on July 27, 2005. The United States requests the Court to conduct a de novo review of that order.

ANALYSIS

The Order for Writ of Habeas Corpus Ad Prosequendum counsels that the Court should preclude Garcia’s release from federal custody without the state of New Mexico’s knowledge and approval. The Order for Writ of Habeas Corpus Ad Prosequendum operates as an assurance to the state that federal custody will account for Garcia’s whereabouts. The Order will need to be modified, as Chief Judge Garcia indicated, before Garcia is released from federal custody.

Consistent with the Court’s ruling at the hearing on this motion, and for the reasons given at the time of the hearing, the Court will affirm Magistrate Judge Garcia’s order.

IT IS ORDERED that the United States’ Appeal of Conditional Release Order, filed July 28, 2005, is affirmed.



UNITED STATES DISTRICT JUDGE

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